

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONTE HOWELL,

Defendant-Appellant.

UNPUBLISHED
September 8, 1998

No. 200916
Recorder's Court
LC No. 96-001772

Before: Corrigan, C.J., and MacKenzie and R. P. Griffin*, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for possession of more than 50 but less than 225 grams of cocaine, MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii). Defendant was sentenced to ten to twenty years in prison, as enhanced for being a fourth habitual offender, MCL 769.12; MSA 28.1084. We affirm.

Defendant first argues that the trial court abused its discretion in admitting a hearsay statement regarding what one officer was told by another officer upon entering defendant's residence. The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). Here, the trial court did not abuse its discretion in admitting the statement because it was not introduced to prove the truth of the matter asserted, but rather to show why the officer went to the rear of defendant's residence. MRE 801(c); *People v Jackson*, 113 Mich App 620, 624; 318 NW2d 495 (1982). Moreover, even if the statement was offered to prove the truth of the assertion, it would fall within the present sense impression exception to the hearsay rule, MRE 803(1). *Westland v Okopski*, 208 Mich App 66, 77; 527 NW2d 780 (1994). Defendant additionally contends that the trial court gave an incorrect cautionary instruction regarding the admissibility of the statement. Because the instruction provided a correct statement of the law, however, MRE 801(c), we decline to reverse on this basis.

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

Defendant next contends that the trial court abused its discretion in admitting the statement of defendant's mother calling defendant by his nickname, "Ponch." We agree with defendant that the trial court improperly admitted the statement under MRE 803(19), the hearsay exception for reputation concerning personal or family history. Nevertheless, the statement was not inadmissible hearsay; it was offered to show that defendant's mother made the statement and not to prove the truth of the matter asserted. MRE 801(c). Because the trial court reached the correct result for the wrong reason, we decline to reverse on this ground. *People v Ortiz (After Second Remand)*, 224 Mich App 468, 477; 569 NW2d 653 (1997).

Defendant also argues that he was denied a fair trial as a result of judicial misconduct. We disagree. Defendant's claim that the trial court refused to allow defense counsel to show the jury certain photographs of defendant's residence while one of the police officers testified is without record support; the record indicates that the trial court gave defense counsel an opportunity to display the photographs when cross-examination of the witness resumed on the third day of trial. Defendant did not object to the other alleged instances of misconduct. Accordingly, this Court will review the claims only if manifest injustice will result from failure to review. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). It would not. First, the trial court's monologue at the start of the third day of trial was unrelated to the case, and could not have unduly influenced the jury. *Id.*, p 341. Second, the court's comments about defendant's physical description, as well as information concerning the finding of a large quantity of drugs in one's possession, were made to clarify defense counsel's questioning of the witnesses. The comments could not have caused the jury to believe that the court had any opinion about the case. *Id.* Finally, the trial court's comments about the scale found in defendant's home did not draw unnecessary attention to this evidence so as to deprive defendant of a fair trial. The comments were merely made to caution the jury not to touch an unknown substance on the scale. Because the trial court did not engage in judicial misconduct depriving defendant of a fair trial, manifest injustice will not result from our failure to review this issue further. *Id.*, pp 340-341.

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Robert P. Griffin